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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

THE PEOPLE,

Plaintiff and Respondent,

v.

SALVADOR VILLA,

Defendant and Appellant.

C086385

(Super. Ct. No. CRF161238)

Defendant Salvador Villa was convicted of transporting and possessing methamphetamine for sale. Sentenced to a total term of seven years in prison, he appeals.

On appeal, he contends he was denied due process and a fair trial because the trial court erroneously admitted into evidence: (1) text messages that were unauthenticated hearsay; and (2) the circumstances of his prior conviction. He contends cumulative error flowed from these errors. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On March 2, 2016, Woodland Police Officer Gary Richter was monitoring a house on County Road 98 and suspected defendant, an occupant of the house, of being involved in the sale of illegal narcotics. After multiple people came and left the house, defendant left the residence and got into the passenger seat of a car that then drove away. Noticing this, Officer Richter instructed marked surveillance units to follow defendant, and upon pulling over the car, officers found 4.6 grams of methamphetamine, an intact pen, and a lighter near where defendant was sitting.

Officers also discovered a digital scale and a cell phone in defendant's pocket. Officer Richter obtained a search warrant for the cell phone and identified numerous text messages and Facebook messages relating to the sale of drugs. Defendant also removed approximately 4.8 grams of methamphetamine from his groin area.

Upon searching the home on County Road 98, officers discovered: (1) several people fleeing the house, two of which had methamphetamine on them; (2) a jewelry box containing 1.7 grams of methamphetamine, a hollowed-out pen, and a cut straw typically used to ingest methamphetamine; and (3) a plastic bag holding 1.149 grams of methamphetamine in a toilet.

DISCUSSION

I

Text Messages

A

Background

During trial, the prosecution sought to introduce text messages and Facebook messages related to the sale of drugs from the phone found in defendant's pocket. Defense counsel objected to the introduction of the messages, arguing the messages lacked foundation and were hearsay.

Defendant admitted the Facebook messages were his and he had downloaded the Facebook messenger application on the phone shortly before the arrest. He refuted the text messages, however, and stated he “won [the phone] in a dice game,” prior to leaving the house on the day of the incident.

Two of the text messages referenced “Sal” which is short for defendant’s name, Salvador. He explained this evidence by stating he is “not the only Sal in Woodland.” One message made a reference to the 98 County Road home.¹ Further, on the day of his arrest, and shortly before defendant’s detention, the cell phone received and sent text messages referencing the sale of drugs.

The trial court found “there [wa]s sufficient evidence to bring [the text messages] to the jury.” To avoid the undue consumption of time that could outweigh the probative value, the court allowed in a portion of the relevant text messages from February 1, 2016, to March 2, 2016, and any messages from January 2016 that referenced “Sal.” During trial, the jury was shown the content of the messages admitted into evidence.

B

The Text Messages Were Properly Admitted

Defendant challenges the admissibility of the text messages on two grounds: lack of foundation and hearsay. Specifically, he contends the prosecution failed to establish the messages on the phone were sent or received by him, making them unauthenticated hearsay. He claims, “[i]n a technological era where impersonation is often a simple task, the admissibility of text messages simply because they include a hearsay reference to ‘Sal,’ raises troubling concerns about authenticity, thereby infringing on [his] right to due process and a fair trial.” Accordingly, he argues reversal is required. We disagree.

¹ On February 11, 2016, the cell phone sent out a response “HM” and “98” when receiving an incoming message asking “Where you at[?],” and Officer Richter understood this response as a reference to defendant’s home on County Road 98.

We first address defendant's claim the prosecution failed to introduce a sufficient foundation to authenticate the text messages as being communications received or sent by him.

All writings must be authenticated before they are received into evidence, and the proponent's burden of showing authenticity is met when sufficient evidence has been produced to sustain a finding the document is what it purports to be. (Evid. Code, § 1401, subd. (a); *People v. Valdez* (2011) 201 Cal.App.4th 1429, 1434-1435.) Essentially, a prima facie showing must be made establishing the evidence would support a finding of authenticity. (*People v. Goldsmith* (2014) 59 Cal.4th 258, 266-267.) "Circumstantial evidence, content, and location are all valid means of authentication." (*People v. Gibson* (2001) 90 Cal.App.4th 371, 383.) The fact conflicting inferences can be drawn regarding authenticity does not make evidence inadmissible. (*Jazayeri v. Mao* (2009) 174 Cal.App.4th 301, 321.)

After the trial court makes a preliminary finding of authenticity by sufficient evidence, the weight afforded to the document becomes a question of fact for the jury. (*People v. Valdez, supra*, 201 Cal.App.4th at pp. 1434-1435.) The standard of review for evidentiary findings is abuse of discretion, and a trial court's decision to admit or exclude evidence will not be disturbed on appeal unless the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9-10.)

Here, the text messages were retrieved from a cell phone found in defendant's pocket during his detention. Additionally, the phone was logged into defendant's Facebook messenger account, and defendant does not dispute the messages from that application were from him. A number of incoming text messages referred to the recipient as "Sal," which is a shortened version of defendant's name, "Salvador," and one text message made a reference to an address where defendant frequently stayed. Further, other text messages were sent close in time to when defendant was apprehended with the

phone. Taken together, these facts provided the prima facie showing that defendant was the sender or recipient of the text messages.

Because the prosecution presented adequate evidence to support a finding the text messages were what they purported to be -- communications to and from defendant -- we conclude the trial court did not abuse its discretion in admitting the evidence for the jury to ultimately decide on its weight.

We next address defendant's hearsay claim, in which he contends the content of the text messages should have been excluded as inadmissible hearsay because the prosecution failed to provide sufficient evidence defendant was the sender or receiver of the text messages. Defendant's argument fails because it relies on the prosecution's failure to lay a proper foundation, and we have already determined the foundation was properly laid based on substantial evidence the text messages belonged to defendant. Accordingly, the trial court did not abuse its discretion.

II

Prior Convictions

A

Background

Before trial, the prosecution sought to introduce evidence regarding the facts of defendant's 2014 conviction for possession of methamphetamine to prove his intent. Those facts showed that on January 23, 2014, a little over two years before the current offense, Woodland Police Detective Richard Towle was monitoring a house where defendant frequently stayed for drug-related offenses. When he noticed defendant leave the house riding a motorcycle, Detective Towle began following him and activated his car's lights and sirens.

Defendant, while attempting to flee, reached into the front pocket of his shirt and discarded a white object, which was later determined to be a bag containing 24.75 grams of methamphetamine. After he was detained, defendant told officers the

methamphetamine belonged to him and he sold drugs to support his heavy use of methamphetamine.

Upon searching the house at which defendant was being monitored, officers discovered a glass smoking pipe for methamphetamine and three digital scales. Defendant was convicted of possession of a controlled substance for sale and served time.

The prosecution argued the facts of this prior offense were “extremely similar” to the facts of defendant’s current offense, and were relevant to show defendant’s intent and knowledge. Conversely, defense counsel argued the instant case was “factually distinguishable,” primarily because the amounts of methamphetamine found on or near defendant in each incident were significantly different.

The trial court held the evidence was directly “relevant -- in fact, seminal to the case -- was [the methamphetamine] possessed for personal use, or was it possessed with intent to sell.” Further, it held the evidence would not cause an undue consumption of time, and the jury could consider it “and decide how to use it.” Accordingly, the trial court granted the prosecution’s request to admit evidence of the facts underlying defendant’s 2014 conviction of transportation for the sale of methamphetamine.

B

Evidence Of Defendant’s Prior Conviction Was Properly Admitted

Defendant argues the trial court abused its discretion by admitting the underlying facts of his prior conviction from 2014. He contends the evidence had minimal probative value as to his intent in 2016, created a danger of jury confusion and speculation, and unduly prejudicing him. Accordingly, defendant urges this court to reverse for evidentiary error. We disagree.

A trial court may, in its broad discretion, exclude evidence if its probative value is substantially outweighed by the probability its admission will: (a) necessitate undue consumption of time; or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury. (Evid. Code, § 352; *People v. Rodriguez* (1994) 8

Cal.4th 1060, 1124.) This analysis is essentially a balancing test of whether evidence is more prejudicial than probative. (*Kessler v. Gray* (1978) 77 Cal.App.3d 284, 291.) The trial court's ruling is reviewed for abuse of discretion. (*People v. Tafoya* (2007) 42 Cal.4th 147, 165.)

The principal factors affecting the probative value of an uncharged act are its similarity to the charged offense and the amount of time between the uncharged and charged acts. (*People v. Kerley* (2018) 23 Cal.App.5th 513, 536; *People v. Zepeda* (2001) 87 Cal.App.4th 1183, 1211.)

Here, the probative value is primarily evidenced by the similarities between the two crimes. Notably, both the uncharged and charged crimes involved the possession of methamphetamine for sale, where defendant was under surveillance, followed, searched, and detained. During both incidents, defendant tried hiding the evidence -- once by discarding it and the other by hiding it in the groin area of his pants. Further, during both incidents, searches of his home were conducted and additional evidence was discovered. Also significant is the fact the crimes were not too remote to be probative, as the prior incident occurred a little over two years before the present incident.

Defendant urges us to give weight to the dissimilarities between the two crimes. For instance, during the prior incident, defendant attempted to flee and discarded his methamphetamine, while here, he did not attempt to flee and voluntarily turned over the methamphetamine stored in his groin area. Further, during the prior incident, defendant had about 25 grams of methamphetamine, while here, he possessed a total of about 9.3 grams. We are not convinced these differences take away from the probative value of the evidence, especially because it is well established the least degree of similarity is required to prove intent. (*People v. Ewoldt* (1994) 7 Cal.4th 380, 402.) In both cases, defendant possessed a large amount of methamphetamine on his person after leaving a home he was residing in that was known to be the center of drug sales. Accordingly, we proceed to

evaluate whether this probative value was substantially outweighed by the prejudicial effect of the evidence.

The Evidence Code section 352 prejudicial effect analysis of undue time consumption, confusion of the issues, and misleading the jury, takes into account whether the uncharged acts resulted in criminal convictions and whether the evidence of uncharged acts was more inflammatory than the evidence of the charged offenses. (*People v. Zepeda, supra*, 87 Cal.App.4th at p. 1211.) Prejudicial evidence essentially has the effect of posing an intolerable “ ‘risk to the fairness of the proceedings or the reliability of the outcome,’ ” or evoking an emotional bias against the defendant. (*People v. Waidla* (2000) 22 Cal.4th 690, 724; *People v. Megown* (2018) 28 Cal.App.5th 157, 164.)

In contrast to the probative value, the prejudicial effect of the prior misconduct evidence on defendant was slight. Here, the uncharged act: (1) was not significantly more inflammatory so as to evoke an emotional bias against defendant because both crimes involved essentially the same type of conduct; (2) did not cause an undue consumption of time because each of the three witnesses called to testify did so briefly; (3) was limited to an issue relevant to the cause because defendant’s intent was a central issue; and (4) was distinct enough for the jury not to confuse it with the charged crime -- different amount of methamphetamine found and distinctive circumstances underlying each incident -- and no evidence suggests the jury did confuse the two. Further, the jury was informed defendant had been convicted of the prior crime so it is unlikely they were inclined to punish him for the uncharged conduct.

We conclude the probative value was not substantially outweighed by the prejudicial effects of the evidence, and accordingly, the trial court did not abuse its discretion in allowing evidence of the facts of defendant’s prior conviction.

III

Cumulative Error

Defendant contends he was deprived of due process and a fair trial under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution due to the cumulative prejudice flowing from the errors. As discussed, the trial court did not abuse its discretion by admitting text messages or prior conviction evidence. Because the trial court did not err, there was no cumulative error.

DISPOSITION

The judgment is affirmed.

/s/
Robie, J.

We concur:

/s/
Raye, P. J.

/s/
Hoch, J.